Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

JOE A. PUTNAM,

Petitioner,

v.

HARLANDALE INDEPENDENT SCHOOL DISTRICT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Did the lower courts commit plain error of law by applying a time bar to Petitioner's § 1983 claim for denial of his request for a name clearing hearing?

II. Was Respondent's decision that Col Putnam's April 10th, 1996 protest was untimely under the Texas Education Code an arbitrary and irrational act, and should the lower courts have found it to be a due process violation?

III. Regardless of whether Petitioner timely protested his termination under the Texas Education Code, do his constitutional claims survive?

PARTIES TO THE PROCEEDING

1. Colonel Joe A. Putnam, Plaintiff-Petitioner

2. Harlandale Independent School District, Defendant-Respondent

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TO THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Comes now the Petitioner, Joe Putnam, through the undersigned counsel, and pursuant to Rule 12, files this petition for a writ of certiorari to the Fifth Circuit Court of Appeals at New Orleans, Louisiana, and in support thereof would show the Court as follows:

OPINIONS BELOW

The Fifth Circuit Court of Appeals affirmed the decision of the United States District Court for the Western District of Texas, San Antonio Division, on November 21, 2002, in a per curiam opinion. The holding of the District Court and the Fifth Circuit are both appended to this petition.

BASIS FOR JURISDICTION

1. The Fifth Circuit affirmed the lower court's opinion on November 21, 2002.

2. Petitioner asks this Court to review a final judgment of a circuit court with respect to questions arising under the United States Constitution.

3. This Court has jurisdiction pursuant to 28 USC § 1254.

4. This petition is timely if filed on or before February 19, 2003.

CONSTITUTIONAL PROVISIONS RELIED UPON

The Fourteenth Amendment to the United States Constitution, Section 1, reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Title 42, Section 1983 of the United States Code reads:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the

purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

In February 1996, a student filed a false allegation against Col Putnam, Director of the Army Junior ROTC program for Respondent, which was then used as a basis for the wrongful termination of his continuing teaching contract. App. C. By law, his contract was a protected property interest. App C. This termination and the concomitant false accusation alleging impropriety with a minor female stigmatized Col Putnam in a way that would clearly foreclose future employment opportunities for a male teacher. App. C. Col Putnam was, thereafter, denied employment by other school districts and suffered a prolonged period of unemployment. App C.

On April 9th, 1996, Respondent notified Col Putnam that the board had voted to non-renew his contract. App. G. Col Putnam answered *the following day*, April 10th, informing Respondent that the charges had no basis in fact and that he wanted to preserve his constitutional rights. App G. Respondent did not answer this letter and did not convene a hearing. App. C. Without statutory foundation to do so, Respondent ignored the April 10th protest and sent a *second* notice to Col Putnam, dated May 3rd, 1996 notifying him that the board had voted to propose his termination. App. G. Col Putnam replied a second time, but not until June 7th, 1996. App. G. Because Respondent had not acknowledged his first request, he sent a copy of the June 7th letter to the Texas Education Agency and a hearing examiner was assigned by the Commissioner of Education to adjudicate. App. G.

Respondent immediately filed a Motion to Dismiss Col Putnam's request for a hearing alleging that under the provisions of the Education Code it was an untimely request. A hearing on the Motion to Dismiss was conducted by the hearing examiner in August 1996. App E. Although the hearing examiner was made privy to Col Putnam's April 10th letter, he failed to mention this letter in his report to the Commissioner. App. D. After receiving his copy of the hearing examiner's report, Col Putnam realized that the April 10th letter had not been mentioned, but he was procedurally prohibited from forwarding a copy to the Commissioner. The Commissioner concluded from the available documents that Col Putnam's June 7th letter was an untimely response to Respondent's May 3rd notice and that Respondent did not have to give Col Putnam a hearing. App. D. It is significant to note that in Respondent's Brief to the Fifth Circuit, their position was that the May 3rd letter began the deadlines under the Texas Education Code, abandoning their argument about the April 9th letter.

In July 1996, the principle eyewitness to Col Putnam's alleged improper conduct admitted in a tape recorded conversation that there was no truth to the accusation, so Col Putnam had incontrovertible proof of his innocence. App. G. He then offered it to Respondent in August and again in December 1996, but Respondent flatly refused both times to hear the evidence giving the excuse that he had not timely asked for an administrative hearing under the state Education Code, so they were not required to hear it. App E. As argued below, contrary to the requirements of due process, Respondent voted repeatedly to terminate Col Putnam's contract with a board member in attendance who was a close relative of an adverse witness. App C. That the board included a biased member was not discovered until 1997, several months after Col Putnam's contract was terminated by

Respondent and, thus, it was not information that was available until the administrative process had concluded.

Although some courts have ruled that the government had an obligation to offer Col Putnam a name clearing hearing, Respondent did not do so. Col Putnam discovered in December 1997 that he had such a constitutional right. App C. He then sent a letter, dated January 8, 1998, to the superintendent and each member of the Respondent board disclosing details of the available exculpatory evidence and asking for a hearing in which to clear his name. App G. Respondent refused his request in a letter dated January 28, 1998. App. G. One year and fifty one weeks later Col Putnam filed suit in state court on January 21, 2000. CR 1, 138. Because Col Putnam's claim included constitutional issues, Respondent removed the case to federal court.

The District court and Fifth Circuit wrongly applied a time bar to Col Putnam's § 1983 claim ruling that a limitations period began in February 1997 when the Commissioner issued his ruling agreeing that Col Putnam's June 7th request for a hearing was untimely. App B, A. However, the § 1983 claim Col Putnam brought to the courts below arose from Respondent's deprivation of his due process rights by denial of his request for a name clearing hearing in January 1998, not because of events occurring in 1996-97. The lower courts also erroneously held that Col Putnam did not timely protest Respondent's decision to terminate his continuing teaching contract under the Texas Education Code. App B, A. The District court improperly ruled in favor of Respondent's Motion for Summary Judgment and the Fifth Circuit Court of Appeals improperly affirmed in a per curiam opinion. App. B, A.

REASONS FOR REVIEW

I. Did the lower courts commit plain error of law by erroneously applying a time bar to Petitioner's § 1983 claim when this claim was based solely on Respondent's denial of his request for a name clearing hearing?

In 1996, as a Junior ROTC teacher for Respondent, Col Putnam was on a continuing contract that could only be terminated for cause, making it a protected property interest. *Grounds v. Tolar Independent School District,* 856 S.W.2d 417, 418 (Tex 1993); App. C. Respondent falsely accused Col Putnam of criminal conduct with a female student and wrongfully terminated his employment, thus stigmatizing him in a way that delivered a death blow to his career because he was not allowed to prove himself innocent and, thus, foreclosed to him other employment opportunities in his chosen profession. App. C.

Falsely accusing an employee of criminal conduct has been held sufficient to implicate a liberty interest. *Burkhardt v. Randles,* 764 F.2d 1196 (6th Cir. 1985). When liberty interests are implicated, the Supreme Court has repeatedly ruled that a name clearing hearing is required. *Board of Regents v. Roth*, 408 U.S. 564, 573, 92 S.Ct. 2701, 2707, 33 L.Ed. 548 (1972); *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed. 494 (1985). Col Putnam asked for a name clearing hearing, but Respondent refused his request. App. G. Further, in *Cabrol v. Town of Youngsville,*106 F.3d 101, 107 (5th Cir.1997), the Court held that a public employee is deprived of a protected liberty interest if terminated for a reason which was (i) false, and (ii) had a stigmatizing effect such that (iii) he was denied other employment opportunities as a result. Col

Putnam was terminated, the accusation was false, he was stigmatized by the nature of the accusation and is now unable to find work in his chosen profession. App. C. When Col Putnam properly requested a name clearing hearing and Respondent refused his request, Respondent denied Col Putnam due process and infringed his liberty interests. App. G; *Brown v. City of Niota*, 214 F.3d 718, 723 (6th Cir. 2000).

It was never disputed below that Col Putnam met the statutory requirements for a name clearing hearing. In his January 8, 1998 letter to Respondent, he offered to present proof that the accusation against him was false. App. G. In this letter he asked for a hearing in which to clear his name. App G. By letter, dated January 28, 1998, Respondent refused his request for a name clearing hearing. App. G.

The January 8th request was made in accordance with the Supreme Court's rulings in *Board of Regents v. Roth*, 408 U.S. at 564. In accordance with the limitations provisions of Texas tort law, Col Putnam filed suit against Respondent on January 21, 2000. CR 1, 138. Tex.Civ.Prac. & Rem. Code § 16.003(a); *Pete v. Metcalfe,* 8 F.3d 214, 217 (5th Cir.1993). This suit was clearly filed less than two years from the date of Respondent's January 28, 1998 denial. As a result, it was not untimely. Col Putnam's injury was not complete until the state refused to accord due process (after his request for a name clearing hearing); thus, the limitations period could not logically begin prior to January 28, 1998. *Zinermon v. Burch*, 494 U.S. 113, 125, 108 L.Ed.2d 100, 110 S.Ct. 975 (1990).

Because of the rulings of the courts below, the violation of Col Putnam's liberty interests must focus on the question of *when* his cause of action actually accrued. Col Putnam's request for a name clearing hearing was not time

barred, because there appears to be no established time limit governing *when* an aggrieved party must ask for a name clearing hearing. Respondent's January 28, 1998 denial of Col Putnam's January 8, 1998 request for a name clearing hearing constituted the due process injury for which Col Putnam filed his § 1983 claim. App. G. At the time Respondent refused Col Putnam's request, due process was denied and the two-year statute of limitations applicable to § 1983 began on January 28, 1998 (the date of Respondent's letter of refusal). App G.

In *Zinermon v. Burch*, the U.S. Supreme Court stated that the denial of due process is not complete when the deprivation occurs. It is only complete when the state fails to provide due process. Logically, then, the limitations period can not begin until the injury is complete. The Sixth Circuit held similarly in *Brown v. City of Niota*: "a plaintiff must request and be denied a name-clearing hearing in order to have been deprived of a liberty interest without due process." *Brown v. City of Niota*, 214 F.3d at 723. In the instant case, the failure to provide due process by refusing a name clearing hearing - the single basis for the § 1983 claim - was not complete until Respondent refused to convene a name clearing hearing after receiving a proper request. This failure to provide due process did not happen until January 28th, 1998. *Zinermon v. Burch, supra;* App. G.

The lower courts wrongly held that the February 1997 decision of the Commissioner of Education was the date upon which Col Putnam knew he had been injured and, accordingly, the statute of limitations should have begun then. However, the 1996-97 awareness of injuries arising from Respondent's mishandling of the administrative process did not deliver the due process injury for which the § 1983 claim was made. Col Putnam's § 1983 claim does not arise from

events rooted in 1996, 1997, or errors in judgment made during the state's administrative process, but from Respondent's January 28, 1998 infringement of his liberty rights by denying his January 8, 1998 request for a name clearing hearing. Not until January 28, 1998, did Col Putnam become aware that he would be denied a name clearing hearing. App. G.

To time bar Col Putnam's § 1983 claim is an egregious error by the lower courts, a misunderstanding of long-standing Supreme Court rulings, a misapplication of the Texas statute of limitations, and not only denies Col Putnam equal protection under the law, but applies the wrong standard of law to his case.

II. Was Respondent's decision that Col Putnam's April 10th, 1996 protest was untimely under the Texas Education Code an arbitrary and irrational act, and should the lower courts have found it to be a due process violation?

Contrary to established procedures of the Texas Education Code, Col Putnam received two different letters from Respondent both of which proposed his termination. The first notice, dated April 9, 1996, proposed to "non-renew" his contract. App G. The second letter, dated May 3rd, 1996, proposed his termination and referred him to Texas Education Code § 21.159 (*not* § 21.253 referenced in the Fifth Circuit's opinion.) App. G.

The Texas Education Code provides the manner in which a teacher may protest a proposed action by a school district. Section 21.159 states that not later than the 10th day

after a teacher receives a notice from the district proposing an action, he or she must protest such proposed action in writing to the school district board of trustees. Tex.Educ.Code § 21.159; App. F. Section 21.253 is similar; however, it uses the language "request a hearing" rather than "protest," allows fifteen days rather than ten, and describes a hearing with the Commissioner of Education. Tex.Educ.Code § 21.253; App. F.

The April 9th letter sent by Respondent to Col Putnam was not constitutionally sufficient in content in that this notice letter did not name the accusers, and rather than citing the statute under which Col Putnam had a right to protest, it stated Col Putnam should consult all "applicable laws." App. G. The record shows that Col Putnam fulfilled the requirements of Texas law by sending a letter to Respondent board, dated April 10th, 1996, timely protesting his discharge, notifying Respondent the charges were false and requesting his constitutional rights be protected. App. G. However, Col. Putnam's April 10th letter was ignored by Respondent and the lower courts. As a result, Col Putnam has been denied the right to prove that his discharge was inappropriate and based on false allegation.

Although Respondent's May 3rd letter, constituting a *second* notice from Respondent, informed Col Putnam that the board had voted to seek his termination, he reasonably believed that his timely, April 10th letter had already met the statutory requirements for notifying Respondent that he disagreed with Respondent's actions and wanted to exercise his constitutional rights to a hearing. App. G. However, he also sent a *second* letter to the board, dated June 7th, 1996, once again asking for a hearing. App. G. This June 7th request has been treated by Respondent and the lower courts as his only request and was held to be an untimely response

to both the April 9th and May 3rd, 1996 letters. App. B, A, G. Col Putnam's April 10th request has been ignored below and the claim of untimeliness of the June 7th letter has been used as an excuse to deny him a fair opportunity to defend himself. App. B, A. Although made aware of this correspondence, the assigned hearing examiner failed to mention the April 10th letter in his report to the Commissioner of Education. App D. Without hearing any other evidence, the commissioner agreed with this incomplete local record and concluded that Col Putnam's June 7th letter was an untimely request to Respondent's May 3rd letter. App D. This was followed by summary disposals in the courts on the same basis. App. B, A.

The reason why the courts below placed no legal significance on the first set of letters exchanged between Respondent and Col Putnam remains unclear. These decisions actually conflict with the Findings of Fact found by the Hearing Examiner and affirmed by the Commissioner, which mentions only the April 9th letter by Respondent and finds that Col. Putnam's June 7th letter was an untimely response thereto. In fact, Respondent's position as to which letter started the deadlines has changed along the way. By the time Appellee/Respondent filed its brief with the Fifth Circuit, it had abandoned its position that the April 9th letter was in any way significant, relying only upon the May 3rd letter.

There is no legal predicate that would allow Respondent to send a second notice letter after Col Putnam had met time line requirements of the law and, without explanation or legal foundation, unilaterally and arbitrarily decide that this second letter was the only letter that would constitute notice to Col Putnam and from which the time lines would be governed. Col Putnam's April 10th letter should

have been viewed as a timely protest under the Texas Education Code to both of Respondent's letters of notification. In addition, it served no public purpose to engage in costly legal gymnastics to avoid hearing evidence which would have cleared Col Putnam at the time such evidence became available. Neither does such conduct comport with the philosophical underpinnings of due process. The U.S. Supreme Court has held that actions by the state must not be arbitrary or irrational. *Martinez v. California,* 444 U.S. 277, 282, 100 S.Ct. 553, 62 L.Ed. 481 (1980); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982). The Supreme Court has further held that "minimum [procedural] requirements [are] a matter of federal law, [and] they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." *Vitek v. Jones,* 445 U.S. 480, 491, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980). In other words, a state may specify procedures, but these procedures must meet due process requirements.

When a Texas school board terminates a continuing teaching contract, there is no provision in Texas law that would allow Respondent to send an employee its constitutionally required notice, then if the teacher timely responds, send additional notices until the teacher *fails* to timely respond, or gets confused as to procedural requirements, and then take advantage of this confusion by declaring him in non-compliance so it can avoid responsibility to give him a due process hearing. See Tex.Educ.Code, § 21.159, 21.253, *et.seq.* Such conduct would allow the board to take unfair advantage in choosing (according to any existing biases or hidden agendas) which notice governs associated time lines which it unilaterally has done in this case, at first asserting the April 9th letter was jurisdictional,

and later asserting that only the May 3rd letter began the time lines. App. D, Appellee's Brief, p. 10, 15-16. Clearly, this change in position was made seeking to avoid the effect of Col. Putnam's April 10th response. Such conduct is tantamount to deprivation of constitutional rights by arbitrary and irrational act rather than due process of law. The adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms. *Vitek v. Jones, supra.*

The Supreme Court stated in *Logan, supra*, "[t]he timing and nature of the required hearing will depend on appropriate accommodation of the competing interests involved" (quoting from *Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 42 L.Ed. 725 (1975). These include the importance of the private interest and the length or finality of the deprivation, the likelihood of governmental error, and the magnitude of the governmental interests involved. *Logan,* 455 U.S. at 434; *see also Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 319 1, 19, 98 S.Ct. 1554, 56 L.Ed. 30 (1978); *Mathews v. Eldridge*, 424 U.S. 319, 334-335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In the instant case, the "private interests" involved were clearly Col Putnam's liberty interests in his right not to have false, stigmatizing charges cause the loss of his career. "Finality" was involved in that Respondent was *permanently* depriving Col Putnam of his protected property interests in his continuing contract. "The likelihood of governmental error" became clear when Col Putnam entered a general denial during a February 1996 meeting between Col Putnam and Respondent; in Col Putnam's letter of April 10, 1996, that the charges were false; and when Respondent was offered exculpatory evidence which Respondent refused to hear. App. C, D, E. In the final analysis, in looking at the "magnitude of government interests involved," it must be considered that Respondent's

mishandling of the entire process led directly to the instant suit which could have been avoided had Respondent administered its due process responsibilities in accordance with applicable federal law. In other words, had Respondent not acted in an arbitrary or irrational manner in finding that Col Putnam's April 10th letter was untimely, Col Putnam would have been able to prove his innocence to the charges and would still be teaching and not pursuing this appeal. However, the state's conduct and procedures destroyed Col Putnam's entitlement without according him proper procedural safeguards and this conduct did not properly allow Col Putnam his rights under the Texas Education Code or the U.S. Constitution. Therefore, the holding of the lower courts must be reversed.

It is not required in Texas law that a teacher notify a board more than once that he protests their proposed action. Col Putnam complied with administrative requirements in his April 10th, 1996 letter, sent one day after Respondent's April 9th notice. App. G. Respondent did not dispute below either *receipt* of the letter, or that it was received *within ten days* of their first notice. The fact that Respondent chose to ignore this letter, chose to rephrase and send out a second notice, changed neither the board's decision to terminate, Col. Putnam's desire to protest Respondent's decision to terminate his employment, nor the fact that the April 10th letter was a timely response under the law. Neither did it change his right to be heard, or his right to expect the government to safeguard his constitutional rights. Respondent may have sent two separate letters to Col Putnam, but the decision to terminate his constitutionally protected contract was the common thread running through both letters. It is also not statutorily required that specific words or phrases be used by an employee in protesting a proposed action or requesting a hearing. Col Putnam was only required to challenge the *decision* to

terminate, not the *method* of termination. Tex.Educ.Code § 21.159 (App. F). Just as there is no requirement for a teacher to timely protest subsequent letters the board chooses to send, there exists no statutory precedent for allowing the Respondent to send out two different letters reflecting the same decision. Col Putnam's April 10th letter should be seen as a proper notice of protest to Respondent's second letter of May 3rd, 1996. There is nothing in the Texas Education Code prohibiting a teacher from making an *advance* request for a hearing. The April 10th letter put Respondent on notice that he protested his proposed discharge and wanted to exercise his rights regardless of how many letters Respondent sent or when they were dated. App. G. The plain language of the code states that the teacher must protest in writing "not *later* than" the tenth day after the teacher receives notice. Tex.Educ.Code § 21.159 (App. F). The meaning of this provision of Texas law may need clarification since Col Putnam's April 10th protest did, in fact, arrive "not later than" the tenth day after Respondent's May 3rd notice. Put another way, there is no specific language in Texas law requiring a teacher's protest be dated *after* receipt of the board's notice to terminate – only that the board be notified not *later* than the tenth day after the date the teacher receives notice of termination. App. F. Col Putnam's April 10th protest should have been considered as comporting with Texas law since Respondent did not dispute receiving this letter prior to May 13th, 1996; *i.e., not later than* ten days after Respondent's May 3rd letter.

It is contrary to the public good to allow Respondent, a public school district, to dangerously dally with dates and letters to avoid its duty. Society charges government agencies with the largest responsibility for acting in accordance with the law and they should not engage in subterfuge, misconduct, or operate to the detriment of public employees by

circuitously and irresponsibly attempting to obviate due process responsibilities by prohibiting public employees from freely exercising their constitutional rights to protect their lives, liberty or property, especially when it is known that an innocent man has been falsely accused and treated unjustly.

In conclusion, when Respondent put into motion a confusing administrative process to terminate Col Putnam's contract, at no time did Respondent notify him that his April 10th protest would be held as untimely or inadequate; at no time did Respondent tell him that his job would be in jeopardy if he failed to make a *second* timely request for a hearing; at no time did Respondent notify him that he would have only one chance to defend himself in front of the board; at no time did Respondent offer him a hearing (pre-termination *or* post-termination) even after being notified that exculpatory evidence had become available; at no time did Respondent tell him that the April 9th, 1996 letter was a mistake. App. G. Clearly, Respondent's conduct was arbitrary, irrational and unfairly left Col Putnam with a teaching career in ruins. Accordingly, Col Putnam's April 10th, 1996 letter should be found to have timely protested his proposed discharge and the lower courts' holding must be found to be in error.

III. Regardless whether Col. Putnam timely protested his termination under the Texas Education Code, do his constitutional claims survive?

The lower courts' rulings directly contradict decisions by the Texas Supreme Court and the United States District Court for the Southern District of Texas, specifically *Texas Education Agency v. Cypress-Fairbanks I.S.D.*, 830 S.W.2d 88, 91 n.3 (Tex. 1997), and *Rogan v. Lewis*, 975 F.Supp. 956, 962 (S.D.Tex. 1997).

From February 1996 through February 1997, all related decisions in this case were made in what are statutorily defined as state administrative processes in which plaintiff was not required to seek relief for constitutional issues. *Texas Education Agency v. Cypress-Fairbanks I.S.D.*, 830 S.W.2d 88, 91 n.3 (Tex. 1997); *Rogan v. Lewis*, 975 F.Supp. 956, 962 (S.D.Tex. 1997). Constitutional issues arose when liberty interests were implicated. *Texas Education Agency v. Cypress-Fairbanks,* 830 S.W.2d at 91. Col Putnam's honesty, integrity and character were impugned at the outset. App. C.

Rogan v. Lewis, supra, is similar to the instant case. In both cases, it was held no protest under the Texas Education Code was timely made. Unlike the instant case, however, the fired teacher in *Rogan* admittedly failed to request a hearing under the Texas Education Code. Of utmost importance to the instant case, however, is that the Southern District of Texas held that the exhaustion of administrative remedies, which would have been triggered by Rogan's request for a hearing, does not apply to constitutional claims. *Rogan v. Lewis,* 975 F.Supp. at 962; *Texas Education Agency v. Cypress-Fairbanks Independent School Dist.*, 830 S.W.2d at 91. The Southern District of Texas held that Ms. Rogan had established as a matter of law that the school district had violated her right to due process by failing to provide her an opportunity to defend herself in front of the Board *after* the Board notified her that it proposed to adopt the school superintendent's recommendation that she be terminated, but before the Board made a final decision. *Rogan, supra.* Col. Putnam was similarly denied due process, but on a more serious allegation than was Ms. Rogan. Moreover, Col Putnam had asked in his April 10th,

1996 letter that his constitutional rights be protected.[1] Thus, the Southern District's ruling in *Rogan* conflicts with the decision reached in the instant case by the Western District of Texas.

Just as in *Rogan,* Respondent in this case violated Col Putnam's constitutional right to due process by deciding to terminate him without first providing an opportunity to be heard. *Rogan v. Lewis,* 975 F.2d at 963. Respondent violated his constitutional rights in a variety of ways, and he brought such complaints in the form of a lawsuit. The Fifth Circuit failed to rule on this issue; however, the District Court held that Col Putnam's alleged failure to timely protest his proposed discharge under provisions of the state administrative processes foreclosed all causes of action he may have had against Respondent, including constitutional violations. This holding does not comport with that of the Supreme Court of Texas in *Cypress Fairbanks, supra,* and certainly conflicts with the holding of the *Rogan* Court.

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[1] The *Rogan* court also made clear that, with regard to federal constitutional claims, a local governmental entity may be held liable under 42 U.S.C. § 1983 for violations of federal law committed pursuant to a governmental "policy or custom." For purposes of § 1983, a school district is a local governmental entity. *Kingsville Indep. School Dist. V. Cooper*, 611 F.2d 1109, 1112 (5th Cir.1980). In addition, the action taken by Respondent was taken pursuant to a governmental policy or custom as a matter of law, in that an "'official policy' includes a 'decision that is officially adopted and promulgated by the [entity's] lawmaking officers.'" *Bennett v. City of Sidell*, 728 F.2d 762 (5th Cir.1984)(*en banc*), *cert. denied*, 472 U.S. 1016, 105 S.Ct. 3476, 87 Led.2d 612 (1985); *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir.1992)

Regardless of the outcome of Col Putnam's state administrative remedies, his constitutional claims should survive. To date, Col Putnam has been provided no relief or remedy for such constitutional deprivations in spite of his April 10th, 1996 notice to Respondent that he desired to exercise his constitutionally protected rights - and in spite of his January 8, 1998 request for a name clearing hearing.

Finally, since Col Putnam had a protected property right being terminated by a public employer some form of hearing was *required*. *Board of Regents v. Roth, supra*. If a hearing is "required", then the state should not be allowed to foreclose federally mandated rights by such arbitrary and irrational decisions as are replete in this case. The state is allowed to set up its own procedures for terminating a public employee, but these procedures must be fairly administered taking into account constitutionally required due process. In situations where federally protected rights are at stake, this provision of state administrative procedure does not comport with the Supreme Court's ruling in *Roth, supra*, in that Texas law does not "require" a hearing except under certain conditions. Rather, it provides for a hearing only if the employee notifies the board within a painfully short and inflexible time frame. This means the state does not provide a true opportunity to be heard in accordance with constitutional mandates. Rather, it only provides an opportunity to *ask* for an opportunity to be heard and subordinates to state procedures the Supreme Court's ruling *requiring* a hearing when protected property and/or liberty rights are implicated. If a hearing is "required," then one should have been convened upon Col Putnam's April 10th request without further argument or paper drills.

Because liberty interests were implicated, a name clearing hearing was also *required*, but Respondent also

refused Col Putnam's request for that constitutionally mandated hearing. If Col Putnam was not required to seek administrative redress for his constitutional claims, then his constitutional claims should not be foreclosed by state administrative authorities, or foreclosed in any way short of full adjudication in a court of law. Col Putnam has never had his day in court.

As the Supreme Court also held in *Logan, supra,* the hearing allowed must be "appropriate to the nature of the case." *Logan,* 455 U.S. at 434. The nature of this case was extremely serious because of the proposed termination of an innocent man's career and the stigmatization that was not and has not been cleared. Therefore, a hearing should have been held and the fact that it was not shows arbitrary and irrational action by the Respondent. In addition, the term "appropriate" might well have been served by Respondent convening a hearing when exculpatory evidence became available rather than suppressing this evidence for the next seven years.

CONCLUSION

In 1996, Col Putnam became the victim of a false accusation resulting from what was proven to be a teen prank and Respondent became an unwitting dupe by terminating his protected contract and stigmatizing him in a way that was certain to foreclose other employment opportunities in his chosen field. Col Putnam made it immediately clear that he wanted to exercise his constitutional rights. Because protected property and liberty interests were involved, Respondent knew or should have known of well established rulings requiring some form of hearing (*Roth, supra*) at a meaningful time (*Mathews v. Eldridge, supra*), especially a name clearing hearing. However, Respondent tried to obviate the Supreme Court's mandates and, from habit of dealing with terminations

not of a constitutional magnitude, relied solely upon administrative provisions of state law ignoring applicable responsibilities under federal law. Col Putnam made it immediately clear that he wanted to exercise his constitutional rights. Because protected property and liberty interests were involved, Respondent knew or should have known of well established rulings requiring some form of hearing at a meaningful time, expecially a name clearing hearing. *Roth, supra; Matthews v. Eldridge, supra*. However, Respondent tried to obviate the Supreme Court's mandates and, from habit of dealing with terminations not of a constitutional magnitude, relied solely upon administrative provisions of state law ignoring applicable responsibilities under federal law.

Although not required to do so when constitutionally protected interests were implicated, Col Putnam made repeated attempts at redress in the state prescribed administrative system. When this process failed him, he lost his constitutionally protected employment and suffered damages to his liberty interests, and in January 1998 he asked for a name clearing hearing to salvage his employability elsewhere. As argued in this case, when liberty interests are implicated, a name clearing hearing is required. It was undisputed below that Col Putnam met statutory requirements for a name clearing hearing, but when he requested one, it was refused by Respondent. The district court wrongly applied a time bar to Col Putnam's § 1983 claim which was brought because of Respondent's denial of his request for a name clearing hearing. There is no statutory time limit for requesting a name clearing hearing, the request was not made until January 1998, and its denial was also in January 1998. If, as pointed out by the Supreme Court in *Zinermon v. Burch, supra*, a constitutional deprivation is not complete until the state denies due process, and the state denied due process in January 1998, then the United States Supreme

Court has held that the statute of limitations should have begun in January 1998, not in 1997 as ruled by the district court. The deprivation and the awareness thereof do not constitute the injury. The due process injury relating to the name clearing hearing occurred when, on January 28, 1998, Respondent denied Col Putnam's request for a name clearing hearing. Col Putnam filed the instant suit on January 21, 2000, less than two years later and, thus, within the parameters of Texas tort law. It was an error of the lower court to apply a time bar.

After receiving Respondent's April 9, 1996 notice, Col Putnam answered the following day on April 10, 1996 informing Respondent that allegations against him were false and that he wanted his constitutional rights protected. The April 10th letter should have been considered below as complying with the provisions of the Texas Education Code. Respondent has changed positions regarding which of the two letters it sent began the deadlines under the Texas Education Code for its own purposes, and to avoid the effect of Col. Putnam's April 10th response. Respondent, and other school districts like it, should be restricted from utilizing such unfair tactics when dealing with a person's livelihood.

Even if multiple notices could be legitimately sent by school districts, there is no requirement in state or federal law that an employee must file more than one protest after being notified of a decision to terminate. The declaration of untimeliness of a notice of protest related to the *second* letter sent to Respondent. Texas law contains no provisions that should prevent the April10th letter from being sufficient notice to Respondent and contains no provisions that would allow the second set of letters to be considered as governing timeliness under the Texas Education Code.

Respondent has known since August 1996 that Col Putnam was innocent of the charges, but has engaged in a seven year campaign to keep that fact from being made public. It is contrary to the public interest and sets a dangerous precedent to allow foreclosure of constitutional rights by a state agency through such arbitrary and irrational acts as documented in this case. Col Putnam has a constitutional right (a) to due process; (b) to equal protection of the law; (c) to defend himself; and (d) to clear his name. Respondent had a legal if not a moral obligation to help him do so.

Because of the disparity between Courts in two different federal districts (Southern District and Western District) ruling differently on similar issues, Col Putnam did not receive the same consideration as did Ms. Rogan *(Rogan, supra)* and, therefore, was denied equal protection of the law.

Col Putnam was not guilty of the false charges made against him and without further legal barriers can prove it to a jury of his peers. Without the assistance of this Court, countless public school teachers in Texas and elsewhere could lose not only their jobs but their reputations and careers, and the public school districts in Texas (and the courts) may continue ignoring due process rights guaranteed by the US. Constitution and this Court's long-standing decisions. Col Putnam asks only for a fair chance to present his case in a court of law to clear himself of the false charges and asks the Supreme Court to reverse and remand so he can finally get his opportunity at justice and damages rather than foreclosing his last hope to regain his well-deserved community image, honor and integrity.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-51097

[Filed November 21, 2002]

JOE A. PUTNAM
Plaintiff - Appellant

VERSUS

MARLANDALE INDEPENDENT SCHOOL DISTRICT
Defendant - Appellee

Appeal from the United States District Court
For the western District of Texas, San Antonio
SA- 00-CV-1068

Before DAVIS, BARKSDALE and DENNIS, Circuit Judges.

PER CURIAM:*

* Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

After reviewing the record and considering the argument of counsel and briefs of the parties, we are satisfied that the district court correctly granted summary judgment in favor of appellee.

On Putnam's breach of contract claim, based on the failure of the appellee to give him a pre-termination hearing, the district court correctly concluded that Putnam failed to show that he made a timely request for a hearing as required by state law. See § 21.253 Texas Education Code. On Putnam's § 1983 claims for due process violations, based on the state's failure to give Putnam a pre-deprivation hearing and a name clearing hearing, the district court also correctly concluded that these claims are time barred under the Texas two year statute of limitations.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Civil Action No. SA-00-CA-1068-EP

[Filed October 2, 2001]

JOE PUTNAM,	)
Plaintiff,	)
	)
VS.	)
	)
HARLANDALE	)
INDEPENDENT SCHOOL	)
DISTRICT,	)
Defendant.	)
	)

ORDER

On this date the Court considered the Defendant's Motion for Summary Judgment, the Plaintiff's response to this motion, and the Defendant's reply. After careful consideration, the Court will grant the motion.

Factual Background and Procedural History

The Plaintiff, Mr. Putnam, sues his former employer, Harlandale Independent School District (HISD) for breach of contract and violation of his constitutional due process rights. Putnam had worked for HISD for eight years on continuing contract. On or about February 12, 1996, Putnam received notice from HISD that allegations existed that he acted inappropriately with one of his students, and he was placed on administrative leave. On April 4, 1996 the HISD Board of Trustees (Board) proposed to non-renew Putnam's contract based on sexual misconduct allegations raised against him. Putnam was notified of this by letter dated April 9, 1996, which he received on April 12, 1996. In a letter dated April 10, 1996, Putnam's then attorney, Steven Brownhill notified HISD attorneys that Putnam was seeking all constitutionally protected rights of due process. Under the law, Putnam had 10 days to request a hearing to the Board or 15 days to request a hearing to the Commissioner of Education. Putnam requested a hearing on the proposed action on June 7, 1996. As allowed by the Education Code, § 21.159, HISD terminated Putnam on July 30, 1996.

On August 7, 1996, Putnam and HISD appeared before a Certified Hearing Examiner regarding HISD's motion to dismiss Putnam's request for a statutory hearing as untimely. Such hearings "shall be conducted in the same manner as a trial without a jury in a district court of this state." TEX. EDUC. CODE ANN. § 21.256(e) (Vernon 1996). Putnam argued that the 10-day hearing request requirement violated his right against self-incrimination and due process as he was facing criminal charges during the same time period. The Examiner rejected this argument. The Examiner's

recommendation was reviewed by the HISD Board on December 16, 1996. The Board heard statements from HISD and Putnam and voted to adopt the Examiner's recommendation, denying Putnam's request for a hearing and finalizing his termination. Putnam then appealed the Board's decision to the Texas Commissioner of Education, which upheld the Board's decision in February 1997. Both forums concluded that Putnam's request for a hearing was untimely and that his failure to timely comply was not excused; the Commissioner also held that HISD did not violate Putnam's due process rights.

Putnam sought review of the Texas Education Agency's decision in the District Court of Travis County, Texas, in March 1997. The case was dismissed for lack of jurisdiction over HISD in December 1997.

On January 8, 1998, Putnam requested a hearing with HISD to clear his name. On January 28, 1998, HISD refused this request. Putnam filed this suit on January 8, 2000 in state court, and HISD removed the case to federal court on September 27, 2000 after Putnam amended his complaint asserting federal constitutional due process violations.

Summary Judgment Standard

In the usual case, the party who seeks summary judgment must show by affidavit or other evidentiary materials that there is no genuine dispute as to any fact material to resolution of the motion. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.4 (1986); *Lavespere v. Niagra Machine & Tool Works, Inc.*, 910 F.2d 167, 178 (5th

Cir. 1990); *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). To satisfy this burden, the movant must either submit evidentiary documents that negate the existence of some material element of the nonmoving party's claim or defense or, if the crucial issue is one for which the nonmoving party will bear the burden of proof at trial, merely point out that the evidentiary documents in the record contain insufficient proof concerning an essential element of the nonmoving party's claim or defense. *See Celotex Corp.*, 477 U.S. at 325; *Lavespere,* 910 F.2d at 178.

Once the moving party has carried that burden, the burden shifts to the nonmoving party to show that summary judgment is not appropriate. *See Fields v. City of South Houston,* 922 F.2d 1183, 1187 (5th Cir. 1991). The nonmoving party cannot discharge this burden by referring to the mere allegations or denials of the nonmoving party's pleadings; rather, that party must, either by submitting opposing evidentiary documents or by referring to evidentiary documents already in the record, set out specific facts showing that a genuine issue exists. *See Celotex,* 477 U.S. at 324; *Fields,* 922 F.2d at 1187. In order for a court to find there are no genuine material factual issues, the court must be satisfied that no reasonable trier of fact could have found for the nonmoving party or, in other words, that the evidence favoring the nonmoving party is insufficient to enable a reasonable jury to return a verdict for the nonmovant. *See Liberty Lobby,* 477 U.S. at 249-50; FED. R. CIV. P. 56(e).

Where the party opposing the motion for summary judgment will have the burden of proof on an essential element of his case at trial and does not, after adequate time for discovery, make a showing sufficient to establish the

existence of that element, summary judgment may be entered against him. *Celotex,* 477 U.S. at 322-24; *Fontenot,* 780 F.2d at 1194-95.

Collateral Estoppel

HISD moves for summary judgment on the grounds of collateral estoppel. Specifically, HISD argues that Putnam is precluded from relitigating the issue of whether he timely requested a hearing in accordance with his statutory and contractual rights under the Texas Education Code.

Collateral estoppel, or issue preclusion, prevents relitigation of particular fact issues already resolved in a prior suit in a subsequent action upon a different cause. *Barr v. Resolution Trust Corp.,* 837 S.W.2d 627, 628 (Tex.1992). A federal court determines the preclusiveness of a state court judgment under the principles of the state from which the judgment originates. *Production Supply Co. v. Fry Steel Inc.,* 74 F.3d 76, 78 (5th Cir.1996). A party seeking to assert the bar of collateral estoppel must establish that: (1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action. *State Farm Fire & Casualty Co. v. Fullerton,* 118 F.3d 374, 377 (5th Cir.1997). Collateral estoppel applies to administrative agency orders when the agency is "acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate." *United States v. Utah Constr. & Mining Co.,* 384 U.S. 394, 422 (1966); *University of Tennessee v. Elliott,* 478 U.S. 788, 799 (1986).

Putnam maintains that the question of whether he timely requested a hearing must be reviewed on constitutional grounds, claiming that this issue was not resolved on the merits. This Court disagrees. The Hearing Officer and Commissioner of Education had jurisdiction over the issues decided in the administrative hearings. The Texas Education Code provides that the Commissioner's jurisdiction extends to appeals by any person aggrieved by actions or decisions of any board of trustees which violate "the school laws of the state" or "a provision of a written employment contract." TEX. EDUC. CODE ANN. § 7.057 (Vernon 1996). The Hearing Examiner and Commissioner held full hearings on Putnam's claim that he was justified in failing to request a hearing within the statutory requirement. Both HISD and Putnam were represented by counsel at the administrative proceedings, and were adversaries. Putnam does not argue that he was not given a fair opportunity to litigate during this process. The decision by the Texas Education Agency became final when Putnam failed to appeal in the proper court within the required time period. TEX. EDUC. CODE ANN. § 21.307(b) (Vernon 1996); *U.S. v. Mendoza,* 464 U.S. 154, 162 (1984); *Muchelroy v. Richardson Indep. Sch. Dist.,* 884 S.W.2d 825, 830-1 (Tex.App.--Dallas 1994, writ denied). The Hearing Officer and Commissioner entered findings of fact and conclusions of law that Putnam's request for hearing was untimely, his failure to comply was not excused, and that Putnam is not entitled to an evidentiary hearing on the merits of his proposed termination. These findings were all necessary to the granting of HISD's motion to dismiss Putnam's request for a statutory hearing. Thus, the Court finds that relitigation of whether Putnam is entitled to a hearing on the merits is barred by collateral estoppel.

Res Judicata

HISD also argues that it is entitled to summary judgment on the grounds of res judicata. HISD maintains that res Judicata prevents Putnam from relitigating issues necessary for his contract claim, that were or could have been brought in the earlier administrative proceedings.

Res Judicata, or claim preclusion, forecloses successive litigation of the same claim raised in an prior judgment, whether or not relitigation of the claim raises the same issues as the earlier suit. *New Hampshire v. Maine,* 121 S.Ct. 1808, 1814 (2001). For a previous judgment to act as res judicata in a later suit, four elements must be present: 1) both suits must be between identical parties (or parties in privity with each other); 2) the previous judgment must have been rendered by a court of competent jurisdiction; 3) the previous judgment must have been a final judgment on the merits; and 4) both actions must involve the same claim or cause of action. *Southmark Corp. v. Coopers & Lybrand,* 163 F.3d 925,934 (5th Cir. 1999). Two suits involve the same claim or cause of action when they involve the same nucleus of operative fact. *Matter of Howe,* 913 F.2d 1138, 1144 (5th Cir.1990).

Under the rules of claim preclusion, "the effect of a judgment extends to the litigation of all issues relevant to the same claim between the same parties, whether or not raised at trial." *Kaspar Wire Works, Inc. v. Leco Engineering & Mach., Inc.,* 575 F.2d 530, 535 (5th Cir. 1978). Res judicata bars all claims that were or could have been advanced in support of the cause of action on the occasion of its former adjudication, not merely those that were adjudicated. *Nilsen*

v. City of Moss Point, Miss., 701 F.2d 556, 560 (5th Cir. 1983).

As noted in the previous section, this case involves identical parties, and the Commissioner's decision was rendered by a court of competent jurisdiction and constitutes a final judgment on the merits. Putnam's current contract action involves the same nucleus of operative facts as his prior suit. The Texas Education Code provides specific statutory procedures for hearings and appeals. Chapter 21 of the Code sets forth the statutory remedies-available to Putnam upon his proposed termination. This includes appeals to the Commissioner, who has authority to review matters involving "the school laws of this state" and provisions of "a written employment contract." TEX. EDUC. CODE ANN. § 7.057 (Vemon 1996). In the administrative proceedings, Putnam raised, or had the opportunity to raise, the same facts that he now alleges to support his contract claim. Because Putnam's contract claim derives from the same nucleus of operative fact that was addressed in prior administrative hearings, his claim is barred by res judicata.

Statute of Limitations

HISD also argues that it is entitled to summary judgment on the grounds of the statute of limitations. Specifically, HISD maintains that the two-year statute of limitations on 42 U.S.C. § 1983 actions bars Putnam's due process claim.

The statute of limitations is two years in Texas for an action brought pursuant to 42 U.S.C. § 1981 and § 1983. *Piotrowski v. City of Houston,* 237 F.3d 567, 576 (5th Cir.

2001). Under federal law, a cause of action begins to run "the moment the plaintiff knows or has reason to know of the injury that is the basis of his complaint. Thus, the statute of limitations begins to run from the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." *Helton v. Clements,* 832 F.2d 332, 334-5 (5th Cir. 1987).

Putnam argues that the statute of limitations began to run when his request for a name-clearing hearing was denied, but cites no authority for this claim. The injuries giving rise to Putnam's liberty interest include Putnam's termination from his job, charges filed against him, and any statements to students regarding Putnam's termination, all of which occurred in 1996. Putnam had access to information that would clear his name for each of these injuries in 1996 as Putnam had exculpatory evidence regarding the sexual misconduct charges in August 1996 and the charge against him was no-billed in October 1996 by a grand jury. Even if Putnam's participation in administrative grievance procedures tolled the statute of limitations, Putnam received the decision of the Commissioner in February of 1997. January 2000 is outside the two-year statute of limitations which began to run, at the latest, in February 1997. As a result, the Court finds that Putnam's § 1983 claim is barred by the statute of limitations.

Sanctions

In its motion for summary judgment, HISD asks this Court to sanction Putnam by awarding costs and reasonable attorney's fees under TEX. EDUC. CODE ANN. § 11.161. Under this provision, a court may award costs and reasonable

attorney's fees if there is a finding that the suit is "frivolous, unreasonable, and without foundation," and judgment is for the defendant. At this time it is not clear whether Plaintiff's suit is frivolous, unreasonable or without foundation. Thus, the Court will deny an award of attorney's fees and costs under TEX. EDUC. CODE ANN. § 11.161.

Conclusion

The Court has found that Putnam's contract claim is barred by collateral estoppel and res judicata, and his due process claim is barred by the statute of limitations. ACCORDINGLY, it is ORDERED that Defendant's Motion for Summary Judgment (Docket No. 19) is GRANTED.

SIGNED and ENTERED this 2nd day of October, 2001.

/s/ _____
Edward C. Prado
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. SA-00-CA-1068(EP)

JOE PUTNAM,)
Plaintiff,)
)
vs.)
)
HARLANDALE)
INDEPENDENT SCHOOL)
DISTRICT,)
Defendant.)
)

AFFIDAVIT
of
JOE PUTNAM

COUNTY OF BEXAR)

STATE OF TEXAS)

On this day personally appeared Joe A. Putnam, who, after being duly sworn, stated under oath the following:

1. "My name is Joe A. Putnam. I am over the age of 18 years and am fully competent to make this affidavit. The

statements contained herein are true and correct and within my personal knowledge.

2. During an October 1995 field trip to Lackland Air Force Base, one of my female students alleged that some unknown person had stolen some money from her backpack. In an attempt to recover the money, I authorized a search of the students' personal belongings after several failed attempts at asking for the guilty party to return the money with no questions asked and guaranteeing no reprisals. When all else failed, I had two of my trusted senior girls take the cadets into the female latrine and search their outer clothing. At no time were these students "strip searched", or searched by males or adults and nobody saw them naked. They were at all times in the privacy of the girls' facility and inside private stalls behind closed doors over which they passed their garments to be searched by the senior girls. They all returned to the same facility and took showers together after the exercise anyway. I did not conduct a "strip search", but that term was applied in documentation by the careless authorship of an administrator with no law enforcement training or clear understanding of the stigma that would be applied by this inaccurate description.

3. After the criticism I endured from the administration as a result of the incident, I checked with a faculty member of the San Antonio Police Academy who teaches search and seizure and was told by this expert that the search was, in fact, not a "strip search", that I had done nothing wrong and that my actions were consistent with the law. Moreover, he told me that the Texas Penal Code says that any citizen has the right to take necessary measures to

prevent the consequences of a theft. This officer has been identified as an expert witness for trial of this case.

4. In addition, I then became offended by the disciplinary action taken by the school district since I had done nothing wrong. They wrongfully put a letter of reprimand in my personnel file alleging that I had subjected the district to possible legal action. I was also outraged that they had put me in such a situation without adequate training, because at no time during my eight years at HISD had there been one minute of teacher in-service training devoted to applicable laws or school policies regarding search and seizure of students in spite of the well known fact that many teachers are frequently required to take students off campus on field trips, and that they could be faced with such a situation where they would not have the normal procedures available to them for referring such problems to the administration or campus security. Although I was of the opinion that they were wrong to have taken disciplinary action against me by such a letter, I didn't protest because I didn't want to upset any of the members of the upper echelon, because I thought I would continue to work for them.

5. On February 12, 1996, I was called to the office by the Principal of McCollum H.S., Syl Perez, who told me I had been accused of grabbing the breast of Jennifer Schomer, a 14 year old female student in my 7th period class. He also told me that a witness had confirmed her claim. I was stunned. Without asking for my side of the story, whether I was even at school at that time, acknowledging that teen age kids are capable of carrying out such baseless mischief, or giving me a chance to respond in any way, he told me "You need to be thinking about what you are going to do, because

I don't believe our plans for next year include you." Believing in the strength of my contract, I told him that he couldn't get rid of me that easily unless his JROTC program closed down. He said to me "you aren't certified". I said, "Yes, I am certified. The Army certifies its instructors and that is the only certification required to teach JROTC in the State of Texas." Demonstrating again that he didn't have all his facts straight and still arguing that he could dismiss me he then said, "Well, you aren't on continuing contract." I then informed him that I had been on continuing contract for five years.

6. Still without asking for my side of the story or giving me an opportunity to respond or defend myself, Perez flatly told me to report to Personnel at the Central office. Upon arrival there I was told that I would be placed on administrative leave with pay pending the outcome of an investigation. I went home and didn't hear from HISD until around the first of March at which time they began sending me letters telling me to meet with Dr. Delilah Rodriguez. By then I had retained an attorney, Steve Brownhill, who sent a letter to the district asking them to put everything in writing and saying that we would respond in writing. The district sent me another letter refusing to put anything in writing and telling me that, if I didn't make an appointment and come in to meet with Rodriguez, I could be terminated for insubordination.

7. Sometime around the first week of March my attorney and I met with Rodriguez and the district's attorney, Bob Ramirez, at which time I was told verbally the results of their investigation. See Exhibit 1. Brownhill told them that we wished to enter into the record a general denial and asked for

copies of the district's governing policies which we never received. Rodriguez insisted that no decisions had been made and that the matter, was still under investigation.

8. A few days later, in my attempt to develop a defense, I called the school and spoke with one of my students, a boy named David Benevides, who I thought might have information which could help me. He had been one of Jennifer Schomer's boyfriends. To date, Schomer has been the only complainant ever identified to me. She had come to me after school one day when she and Benevides had ended their relationship. She was crying and I counseled her until she felt better, stood up, hugged and thanked me and went on her way. I thought this behavior to be inconsistent for a girl who claimed to be scared of me as she had alleged in her statements.

9. Approximately three days after the phone call, I received a letter from the superintendent, Richard Marquez, forbidding me from contacting any students. This order effectively denied me the capability to defend myself. Absent the right to access students who might have provided information central to my defense, I hired a private investigator, Cindy Merrill. During her investigation, she spoke with many students who were, at first, very cooperative and willing to make statements that would help my case. However, upon arriving at their private residences to get the statements signed she discovered they had unexplainedly become unwilling to sign them and she was told by parents to leave. We were told later by Soleda and April Lopez, two of my former students, that HISD administrators had directed that announcements be made to all my classes that students were prohibited from talking to me, to my investigator, to my

attorney, and they were not to make any statements, sign anything, or help in any way even if they were contacted at home. Being afraid they would get into trouble at school, they became too scared to get involved and this caused them to change their minds about signing the statement they had given the investigator on the phone. It is. also pertinent to note that this announcement was made in the Fall Semester of the following school year (after my contract had been terminated) where incoming freshmen were present who would not have had any knowledge of the incidents of the previous year.

10. In spite of the announcements, Soleda Lopez wrote a supporting statement on my behalf and was called to the office by a vice principal where she was severely reprimanded for it. See attached statement of Soleda Lopez. This action further prevented other students from helping to clear up the matter.

11. My attorney wrote a letter dated April 10, 1996, requesting all constitutionally protected rights of due process. The district subsequently notified me in April 1996 that they were seeking to non-renew my contract. Bob Ramirez acknowledged receipt of this April 10, 1996, letter to Mr. Brownhill during a meeting held in August by a certified hearings examiner, David J. Williams, and in fact HISD has attached a copy of the letter as an Exhibit. The letter sent to me from HISD notifying me of their proposed action once again carelessly and wrongly stated that I had been accused of improper conduct with "several female cadets." During the meeting held by Delilah Rodriguez in February 1996, and in subsequent conferences with various parties over the last several years, only Jennifer Schomer has been identified to me as a complainant, so HISD has given the

false impression about me in publishing a document implying that complaints had come from "several" students. If there are other complainants, then HISD has failed in its legal duty to disclose the identities of these students.

12. In order to have a fair and reasonable opportunity to clear myself, I needed to know what evidence was in the record and through my attorney I asked for a copy of my file. See attached Exhibit 2. Although I was legally entitled under state and federal law to review this information and to know what was in the record, HISD once again denied my request. See attached Exhibit 3.

13. After receiving notice of HISD's proposed termination action in May, I faxed a copy of it to Mr. Brownhill. For a period of several days, perhaps weeks, I was unable to reach Brownhill by phone or any other means to ask about a response to the HISD letter. Brownhill later told me that he felt his April 10th letter had been sufficient advanced notice to the board that I wanted to exercise my right to any hearing allowed by law, so he didn't feel it necessary to send an additional request. However, I had received information from Cindy Merrill that Maxine Vargas had manifested a willingness to step forward to recant her previous statement, and believing that would help prove Jennifer Schomer had lied, I wanted the board to know it. Therefore, I sent a letter to HISD on my own initiative and the Texas Education Agency assigned a hearing examiner. Ignoring the April 10th letter from my attorney, HISD immediately filed a Motion to Dismiss alleging that I had not requested a hearing on a timely basis. My understanding of the Education Code was that a request for a hearing had to be filed not later than ten days after the date of receipt of notice of proposed action. Since

HISD had received my request weeks earlier than that, I expected they would be willing to hear my new evidence, but they weren't.

14. All parties met (my attorney was present by speaker phone only because he was in Houston at the time) in August 1996 at the request of the Hearing Examiner, David Williams, who, we were told, would be procedurally barred from hearing anything but arguments on the Motion to Dismiss. By this time, my private investigator had gathered evidence which would have proven my innocence including a written, recanted statement by one of the so-called witnesses and two tape recorded conversations with two other witnesses which would have provided proof and confirmed what I had been telling them all along...that Jennifer Schomer had lied. Mr. Williams was not allowed to hear or consider this very important information. Mr. Williams erroneously concluded that HISD did not have to grant my request for an evidentiary hearing since he thought my second request in June was the only attempt I had made to get a hearing and that the June request was not filed prior to the tenth day following the notice of the termination action. Although the district had the authority to hear my evidence anytime it wanted, and to lend attention to the truth regardless of when it became available, it was not the position of the School Board to be reasonable, flexible or cooperative and Mr. Williams' recommendation was that my request for a hearing should be denied. I had never seen such a rigid and adamant refusal taken by a governmental body and always thought that I would eventually be heard. It was because I always expected the board to manifest some modicum of fairness and interest in the fundamentals of justice that I delayed as long as possible taking any legal action against them. I didn't want to alienate

the members of the board who I expected to eventually return me to work.

15. Although Williams also failed to file his report about my alleged "untimely filing" in accordance with the time lines established for hearing examiners, his recommendations were sent to HISD in November 1996. As a result, the board held a meeting on December 16, 1996 to consider the examiner's recommendation. This meeting was held in private, behind closed doors at Terrell Wells Middle School, not in public. Although HISD did not notify me that there would be any opportunity to clear my name, I brought to that meeting the written, recanted statement and tape recordings of witnesses that would have cleared up the whole incident and had all the necessary evidence to prove that Jennifer Schomer had lied about all allegations. I also had witnesses there ready to testify, but we were told that we could not present any evidence, witness testimony, or new information. We were only given five minutes to make statements as long as they were not evidentiary. Adversarial as their mind set has been since the whole thing started, the district voted to accept Williams' recommendation without manifesting any willingness to hear the evidence of my innocence. In spite of the fact that I was unable to present my evidence officially on the record, three of the seven members voted to retain me. I only needed one more vote and thought that I could have persuaded at least one of the four if they had been willing to hear the tapes and witnesses. I remember thinking at the time that one of the witnesses who Delilah Rodriguez had received a statement from was the niece of one of the board members, Grace Acuna, and that it would be unfair for her to vote in this case. As might be expected,

Acuna was not among the three who voted to retain my services. I feared a certain bias might have occurred.

16. When I learned the results of the board vote, I still refused to give up. On separate occasions, I personally contacted two of the board members, Bob Casteneda and David Sosa, both of whom I had known for several years and Casteneda's son was in my JROTC program. I played one of the tape recordings for them and showed Sosa the recanted statement. They both agreed that they would support an initiative to get the issue "back on the agenda" and said that it only took two of them to do so. I took that as a sign that I would finally have an opportunity to present my evidence and be reinstated to my job. However, I waited for several weeks which grew into months and I then realized that they weren't going to do anything.

17. As a result of the hearing examiner's recommendation, and in accordance with the provisions of the Education Code, I followed the administrative remedies available to me and filed an appeal to the Commissioner of Education who subsequently agreed with the Hearing Examiner, which is a matter of record. As a matter of procedure, the commissioner was only allowed to hear the same information that had been before the hearing examiner. And since the hearing examiner's report was incomplete in that he failed to consider or mention the April 10th Brownhill letter, the commissioner reached the same erroneous conclusion. The only issue ever adjudicated by the hearing examiner- and consequently the commissioner - was HISD's Motion to Dismiss for lack of a timely request for a hearing, not the merits of my case.

18. Still trying to get my evidence into the record Mr. Brownhill then filed civil litigation in Travis County hoping to get an opportunity to show the fundamentally unfair acts, present in the handling of this case from the beginning. Upon receiving service, HISD filed yet another Motion to Dismiss based on the argument that a Travis County court was not the proper jurisdiction. HISD could have agreed to try the case in Travis County, but they would not, so Travis County was determined to lack jurisdiction.

19. Mr. Brownhill then withdrew from my case leaving me pro se. After reading the governing rules and procedures, I agreed with counsel for HISD that the proper venue for my argument was Bexar County and I non-suited in Travis County. None of the evidence central to my defense to the baseless accusations was ever presented to or judged by the HISD board, the hearing examiner, the commissioner, or the court in Travis County. No evidentiary hearing has ever been granted, to me. No forum has ever been available in which I could present my evidence and clear myself. Neither the merits of my case nor my evidence showing the spurious nature of the allegations has never been adjudicated by any administrative body or court anywhere.

20. Previously, however, Brownhill filed suit against me alleging that I owed him for services. As a result, I filed suit against him alleging what I thought to have been his shortcomings as an attorney and seeking redress for the severe psycho-emotional, professional, social and financial damages done to me so unjustly. In retrospect it would have been best if he had sent a second request for a hearing. However, after further consideration of the hearing examiner's report, closer study of the correspondence of

record and the actions taken by all parties, and a realization that Williams had failed to consider all of the evidence in reaching his conclusions, I eventually agreed that the April 10, 1996 letter Brownhill had sent to HISD should have been considered as legally sufficient notice to the board of my desire for any hearing provided by law. This letter was received by them "not later than ten days" from the date of their notice and it put them on alert that I wished to exercise all of my constitutionally protected rights. Since Brownhill had on my behalf complied with the laws governing a request for a hearing, and since the glaring error was on the part of HISD (in their failure to provide a hearing at a meaningful time and in a meaningful manner in compliance with my April 10th request) and not Brownhill, I elected not to pursue my case against him. In negotiating with Brownhill he offered to drop his suit against me for fees, if I dropped my counterclaim against him. I let my counterclaim against Brownhill as well as his lawsuit, against me for attorneys fees be nonsuited.

21. In March 1996, I was informed that the San Antonio Police Department was conducting an investigation into the matter. At the suggestion of Steve Brownhill, I retained an attorney, Mike Gross, to represent me in the criminal case, but later hired Emil "Butch" Holiner to take the case. In the spring of 1996, one of the alleged witnesses, Maxine Vargas, gave a sworn, recanted statement to my private investigator, Cindy Merrill, saying that there was no basis in fact to Schomer's accusations. See attached Exhibit 4. On July 18th of that year, Soleda Lopez spoke on the phone with Brandy Trammell, another alleged "eye witness" who had originally confirmed Schomer's claim. During this phone call, Brandy also admitted that the events described in

Schomer's statement to the school district and SAPD had not happened. Fortunately, Soleda tape recorded the phone call. She also made a recording of a boy named Pete Garza who said the same thing about other statements made by Schomer. In August, Butch Holiner took the Vargas letter and the tape recordings to the Bexar County prosecutor who, I was told, then "washed" the case through a Bexar County Grand Jury and it was "no billed" sometime in October. The information about the No Bill was available at the December 16th meeting of the board, but not available to present to the hearing examiner in August. I was prepared to share this information with the board in December, but was not allowed to do so. The transcript of this board meeting even specifically state the restrictions that were placed on us and clearly show that this was not an opportunity for a name clearing hearing. See Exhibit 4.

22. After the Grand Jury "no-billed" the case, I asked DPRS to reconsider their investigation. They told me they checked with the District Attorney's office, and that they were considering whether to re-file charges. Nothing was ever re-filed. I followed up with DPRS later and they were still waiting. I have asked for an administration review from them.

23. Left with no other administrative avenues for redress and still trying to right the wrong that had been done to me, I sought the advice of Bill Blanton, an attorney who referred me to a colleague of his for advice concerning my potential for filing a case against my former employer, Harlandale ISD, for violating my constitutional rights and for twice breaching my contract by failing to provide me with procedural due process and for terminating me without cause. During telephone conversations on numerous occasions with

Mr. Blanton's colleague, Bob Schulman, (and at least one conversation with Schulman's partner, James Heidelberg) who had considerable experience in education law through his representation of San Antonio ISD, and with whom I discussed my case in great detail on several occasions, I was informed that, under the 14th Amendment of the Constitution, I had a right to what he called a "Name Clearing Hearing". I followed his advice, researched the law and applicable cases, found that I met the requirements for justifying a Name Clearing Hearing and that the governmental agency I had worked for not only should have taken the initiative to tell me about this opportunity, but should have offered me such a hearing, especially after the criminal charges were disposed of. I wrote a letter to each member of the HISD school board in January 1998 informing them of the nature and details of the proof I had of my innocence and, with all the diplomacy I could muster, asked for a hearing and an opportunity by which to clear my name. Within a few weeks I received a letter signed by the superintendent, Jack C. Jordan, denying my request. Suffice it to say I was also surprised when the same James Heidelberg became the attorney for HISD.

24. In January 2000, prior to the exhaustion of the two year statute of limitations, I filed civil litigation against Harlandale ISD for failing to abide by my constitutionally guaranteed right to a name clearing hearing, for failing to abide by the laws which were made part of the contract and for terminating my continuing teaching contract without cause.

25. Earlier this year I also met with a former colleague, Carroll Parker, who told me that the same student, Jennifer Schomer, had also tried in August or September of

1998 to falsely accuse him of impropriety with her, but he fortunately had another teacher as a witness and the whole matter was handled very quietly and without incident. In the course of investigating her complaints, Parker told me that he had consulted her ROTC teacher, Major Cheryl Belz, who told him that Schomer had "been the victim of a lot of sexual abuse in her past and that anything - or nothing - can set her off". It is because of such an emotionally unbalanced girl that I have suffered and the school district rushed to judgment over an incident that should have been handled with the same consideration as the Parker incident.

26. It may also be pertinent to note that I filed civil litigation against Jennifer Schomer, Brandy Trammell and their parents. I got a judgment against the Trammells when they failed to show up for trial and was awarded a million dollars. However, it was a hollow victory since the Trammells lived in a trailer with cardboard covering their windows."

/s/ _____
Joe A. Putnam

SWORN TO AND SUBSCRIBED before me on the 6 day of August, 2001, to certify which witness my hand and seal of office.

/s/ _____
NOTARY PUBLIC,
STATE OF TEXAS

My commission expires 2-10-2005

APPENDIX D

DOCKET NO. 082-R1-197

JOE A. PUTNAM	)	BEFORE THE
	)	
v.	)	COMMISSIONER OF
	)	EDUCATION
	)	
HARLANDALE	)	THE STATE OF TEXAS
INDEPENDENT	)	
SCHOOL DISTRICT	)	
	)	

DECISION OF THE COMMISSIONER

Statement of the Case

Petitioner, Joe A. Putnam, appeals Respondent's, Harlandale Independent School District's decision to terminate his continuing contract.

Christopher Maska was the Administrative Law Judge appointed by the Commissioner of Education to preside over this cause. Petitioner was represented by J. Steve Brownhill, Attorney at Law, Houston, Texas. Respondent was represented by Bob Ramirez, Attorney at Law, San Antonio, Texas.

Decision of Commissioner of Education

Findings of Fact

1. On December 16, 1996, Respondent, Harlandale Independent School District, voted to terminate Petitioner's, Joe A. Putnam's, continuing contract. Petitioner was represented by counsel at this hearing.

2. Petitioner filed his Petition for Review on January 2, 1997.

Discussion

Petitioner seeks to overturn Respondent's decision to terminate his contract. Respondent voted to accept the decision of the certified hearing examiner that Petitioner's request for hearing was untimely. Petitioner argues that he was not required to request a hearing within 15 days of receiving notice of proposed contract action. While he acknowledges this requirement found in Texas Education Code §21.253, he contends that as applied to him, it would violate his right against self incrimination and his right to due process. Petitioner contends that his termination was proposed because he failed to respond to allegations about sexual impropriety with students. He chose not to do so because to do so could waive his right against self incrimination. In the first place, the proposed contract action was taken "pursuant to the results of an investigation of allegations of misconduct with some students under your...

[p. 3] ...Commissioner to hold an evidentiary hearing, these documents are not evidence in this case. Texas Education Agency §§21.301, 21.302.

Conclusions Of Law

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner of Education has jurisdiction of this appeal pursuant to Texas Education Code §21.301.

2. The requirement that a request for hearing must be made within 15 days of notice of proposed contract action is not excused when a teacher is also under criminal investigation. Texas Education Code §21.253.

3. If Petitioner had timely requested a hearing, Petitioner would have had the opportunity to argue that his proposed termination was based on his decision not to waive his right to self incrimination, that he cannot be compelled to testify, and that no implication can be drawn from his invocation of his Fifth Amendment rights. Texas Education Code §21. 255- 21.258.

4. The documents attached to the Petition for Review are not evidence in this case. Texas Education Code §§ 21. 301, 21.302.

5. The Conclusions of Law of the certified hearing examiner are adopted as if set out in full. The Recommendation of the certified hearing examiner is attached as "Exhibit A." Texas Education Code § 21.304.

6. Petitioner's arguments that Respondent failed to live up to agreements are not supported by the record and were waived when Petitioner failed to timely request a hearing and to make these argument before the board of trustees.

7. Petitioner was timely "reformed of the board's decision to terminate his contract.

8. Respondent did not violate Petitioner's due process rights.

9. Respondent did not violate Petitioner's right against self incrimination.

10. Petitioner's appeal is denied.

11. Respondent's decision to terminate Petitioner's contract is affirmed...[end of excerpt]

DOCKET NO. 153-LH-696
Exhibit A

HARLANDALE INDEPENDENT SCHOOL DISTRICT	)	BEFORE THE
	)	CERTIFIED
v.	)	HEARING
	)	
JOE PUTNAM	)	EXAMINER
	)	

FINDINGS OF FACT

1. Joe Putman is a teacher employed by the Harlandale Independent School District under a continuing contract.

2. At a special called meeting of the Board of Trustees on April 4, 1996, the Board voted to accept the Superintendent's recommendation to not renew Mr. Putnam's contract with the district. The non-renewal was based upon allegations of misconduct with students.

3. By letter dated April 9, 1996, David Sosa, as President of the Board of Trustees, notified Mr. Putnam of the Board's decision.

4. Mr. Putnam received the letter notifying him of the Board's proposed action on April 12, 1996.

5. On June 7, 1996, Mr. Putnam mailed a letter to the Board of Trustees and to the Commissioner of Education protesting the proposed action.

6. The Superintendent's office received Mr. Putnam's letter on June 12, 1996.

7. On April 10, 1996, Mr. Putnam received correspondence from the San Antonio Police Department requesting his voluntary compliance with an investigation concerning a complaint of indecency with a child (a possible second degree felony). This indicates that Mr. Putnam was under criminal investigation for the alleged conduct related to the Board's action.

CONCLUSIONS OF LAW

1. Section 21.158 of the Texas Education Code requires the Board of Trustees to notify the teacher in writing of the Board's proposed action to terminate a continuing contract. The Board complied with this provision by its April 9, 1996 letter.

2. Section 21.159(a) of the Texas Education Code requires a teacher desiring to protest a proposed action to "notify the Board of Trustees in writing not later than the 10th day after the date the teacher receives the notice under Section 21.158.

3. Section 21.253 of the Texas Education Code requires a teacher to file a written request for a hearing before a hearing examiner not later than the 15th day after the date the teacher receives written notice of the proposed action.

4. Mr. Putnam's notice of protest and request for hearing was untimely under Sections 21.259(a) and 21.253 of the Texas Education Code.

5. Mr. Putnam's failure to timely comply with the notice provisions was not excused. Nothing in the hearing procedure requires Mr. Putnam to waive his Fifth Amendment right against self-incrimination in order to avoid automatic termination of employment. Closs v. Goose Creek Consolidated Independent School District, 874 S.W. 2d 859, 874 (Tex. App.- Texarkana 1994).

6. Because Mr. Putnam's notice and request were untimely, Mr. Putnam is not entitled to an evidentiary hearing on the merits of his proposed termination under Section 21.159(b) of the Texas Education Code.

7. If the teacher does not timely request a hearing, the Board shall take the proposed action pursuant to Section 21.159(c) of the Texas Education Code.

DISCUSSION

Joe Putnam is employed by the Harlandale Independent School District as a teacher under a continuing contract. The Board of Trustees informed Mr. Putnam by letter dated April 9, 1996 that it did not intend to renew his continuing contract due to an allegation and investigation concerning misconduct with a student. Mr. Putnam received this notice on April 15, 1996 and did not notify the Board of his desire to protest the action within 10 days nor request a hearing within 15 days as required by statute. The school district filed a motion to dismiss for untimely filing asking the hearing examiner to dismiss the protest because it was not filed timely.

Mr. Putnam does not dispute that his notice of protest and request for a hearing were untimely. He claims, however, that he was under criminal investigation for the alleged misconduct and that forcing him to comply with the jurisdictional prerequisites of the hearing procedure could cause him to forfeit his Fifth Amendment privilege against...

APPENDIX E

DOCKET NO. 153-LH-696

BEFORE THE BOARD OF TRUSTEES

HARLANDALE INDEPENDENT SCHOOL DISTRICT	)
vs.	)
JOE PUTNAM	)

Hearing taken December 16, 1996
at Terrell Wells Middle School
422 West Hutchins Place
San Antonio, Texas 78221

Appearances:

ESCAMILLA & PONECK, INC.
1200 South Texas Building
603 Navarro
San Antonio, Texas 78205
BY: JUAN J. CRUZ
Appearing for the Petitioner;

BROWNHILL, BURNETT & ASSOCIATES
1177 West Loop South, Suite 1570
Houston, Texas 77027
BY: J. STEVE BROWNHILL
Appearing for the Respondent.

Also present;

JENNIFER RODRIGUEZ,
Certified Shorthand Reporter
in and for the State of Texas.

[p. 2] (The following matters were held in closed session.)

THE PRESIDENT: The purpose of this meeting is to consider the recommendation of the certified hearing examiner in the matter of Joe Putnam, a continuing contract teacher at McCollum High School.

The procedural background of this matter: By letter dated April 9, 1996, Joe Putnam was notified that the Board proposed terminating his employment with the district. Mr. Putnam requested a hearing on the proposed action on about June 12th, 1996. As allowed by the Education Code, Section 21.159, the district terminated Mr. Putnam on July the 30th; 1996.

The Texas Education Agency assigned a certified hearing examiner, David Jed Williams, who scheduled and heard the matter. Mr. Williams heard testimony and received documentary evidence on August 7th, 1996, regarding the district's motion to dismiss for untimely filing. On December 10th, 1996, Mr. Williams issued his recommendation that the Harlandale Independent School District Board of Trustees state the proposed action concerning a non-renewal of Joe Putnam's contract. Pursuant to...

[p. 9] education. I think if you look at his record with the R.O.T.C., you can find it went from one status to the highest

status allowed in the United States as distinguishable. He has taught top drawer all the way and I would urge this Board to look past the failure to timely request a hearing because of these constitutional issues and look at the facts and look at what the school district and the kids will be losing if you support it on that technicality. The facts need to be looked at. It would be a shame to lose this educator.

At this time, we would request that the Board reject the finding of the hearing examiner, Mr. Williams, and conduct an investigation and a hearing if necessary on the merits of what was said in the allegations. To do anything else would be a miscarriage of justice and it would be a real shame for the school district to lose him. Thank you.

THE PRESIDENT: Mr. Cruz, do you wish to make a rebuttal statement?

MR. CRUZ: Yes, sir, Mr. Chairman. I'd just like to respond briefly to Mr. Putnam's lawyer's response. Basically, you know, this constitutional argument, it has already been made to the hearing examiner and the law is that if you're [p. 10] not in threat of a termination, your constitutional rights do not require you nor forbid you to comply with the time lines as issued by the law. His criminal investigation or his criminal Fifth Amendment argument is basically very much a secondary argument. He is still required -- Requiring to conduct a hearing or just issue the Board of Trustees or the Commissioner of Education a request for a hearing would not in any way would have complied with or curtailed Mr. Putnam's rights, his due process rights.

Mr. Putnam's lawyer again asks you to look behind the timelinęss and look to the truth of the matter. Well, you know, the truth of the matter allegedly could have been told if he would have complied with his due process requirement right to a hearing, But the fact that he didn't, the Board has no opportunity to listen to his side of the story. He did have a chance to tell his side of the story, but he did not take advantage of the applicable time line in a timely manner as required by law.

Therefore, because of this untimeliness, this Board should accept the hearing examiner's recommendation and finalize Mr. Putnam's termination. Thank you.

THE PRESIDENT: Are there any questions from the board members?

(No response)

THE PRESIDENT: At this time the Board thanks the parties for their oral arguments. The Board may now deliberate and a decision will be issued. We ask that the parties and their representatives please excuse themselves out of this room in order for the Board to deliberate.

(Other matters were held off the record.)

(The following matter was held in open session.)

BOARD MEMBER: Mr. Chairman?

THE PRESIDENT: Yes.

Excerpt of Transcript Hearing - 12/16/96

MS. HART: I move that we adopt the decision recommendation of the hearing examiner, adopt the findings of fact and conclusions of law recommended by the hearing examiner, and that we non-renew and terminate Joe Putnam as a continuing contract teacher.

BOARD MEMBER: Seconded.

THE PRESIDENT: Moved and seconded. Discussion?

(No response.)...

APPENDIX F

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE D. EDUCATORS AND SCHOOL DISTRICT EMPLOYEES AND VOLUNTEERS
CHAPTER 21. EDUCATORS

SUBCHAPTER D. CONTINUING CONTRACTS

§ 21.159. Hearing Under Continuing Contract

(a) If the teacher desires to protest the proposed action under Section 21.156 or 21.157, the teacher must notify the board of trustees in writing not later than the 10th day after the date the teacher receives the notice under Section 21.158.

(b) A teacher who notifies the board of trustees within the time prescribed by Subsection (a) is entitled to a hearing as provided by Subchapter F.

(c) If the teacher does not request a hearing within the time prescribed by Subsection (a), the board of trustees shall:

(1) take the appropriate action; and

(2) notify the teacher in writing of the action not later than the 30th day after the date the board sent the notice of the proposed action under Section 21.158.

SUBCHAPTER F. HEARINGS BEFORE HEARING EXAMINERS

§ 21.253. Request for Hearing

A teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action. The teacher must provide the district with a copy of the request.

APPENDIX G

Harlandale Independent School District
102 Genevieve, San Antonio, Texas 78214-2997
(210) 921-4334

Board of Education
David Sosa, President

Bess Hart, Member	John Greene, Vice President
Gracie Acuna, Member	Robert Casteneda Jr., Secretary
Mike Pacheco, Member	Leo R. Rodriguez Jr., Member

April 9, 1996

Col. Joe Putnam
7242 Autumn Park
San Antonio, Texas 78249

Re: Proposed Nonrenewal Employment Contract

Dear Col. Putnam:

The Board of Trustees at its special called meeting on April 4, 1996 has voted to propose the nonrenewal of your employment contract with the School District. Please be advised that this is notice under the applicable laws and under your contract.

This proposed nonrenewal is based on the Superintendent's recommendation pursuant to the results of an investigation of

allegations of misconduct with some students under your supervision. You were afforded an opportunity in the presence of your attorney to review the charges brought against you and you were given an opportunity to respond to those charges. To this date you and your attorney have refused to respond.

You should consult all applicable laws with regard to any response you may have to this notice.

Respectfully,

/s/ _____
David Sosa
President
Board of Trustees
Harlandale I.S.D.

xc: Mr. Richard A. Marquez, Superintendent
Dr. Syl Perez, Principal
Personnel File

BROWNHILL, BURNETT & ASSOCIATES, P.C.
Attorneys at Law
1177 West Loop South, Suite 1570
Houston, Texas 77027

J. STEVE BROWNHILL (713) 626-1570
(713) 626-5665 (FAX)

April 10, 1996

Mr. Bob Ramirez
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
Houston, TX 78205-1826

Re: Joe Putnam (Harlandale Independent School District)

Dear Mr. Ramirez:

Thank you for your letter of 3 April 1996.

This letter serves as Mr. Putnam's response to the school district's utterly unfounded allegations of inappropriate conduct with students. Mr. Putnam categorically denies any wrongdoing of any manner in his conduct and dealing with his students. The charges that the school district has made against him are indescribably vague, over broad and misleading, and he has not been afforded any opportunity to have those charges presented to him in a tangible form or to know the factual basis of the accusations the school district is making. The school district's practice in this regard denies Mr.

Putnam his constitutional rights and due process, and they interfere with his valuable and continuing property rights under his contract of employment with the school district.

Additionally, Mr. Putnam has received a letter from the San Antonio Police Department, Sex Crimes Division. According to the letter, a criminal investigation is underway in reference to these issues.

I respectfully reiterate my client's categorical denial of the allegations against him, and his insistence that the school district either present competent proof thereof and afford him his constitutionally protected opportunities of due process in this regard or abandon this witch hunt.

Very truly yours,

/s/ _____
J. Steve Brownhill

JSB:lr
040896-2

Harlandale Independent School District
102 Genevieve, San Antonio, Texas 78214-2997
(210) 921-4334

Board of Education
David Sosa, President

Bess Hart, Member
Gracie Acuna, Member
Mike Pacheco, Member
John Greene, Vice President
Robert Casteneda Jr., Secretary
Leo R. Rodriguez Jr., Member

May 3, 1996

Col. Joe Putnam
7242 Autumn Park
San Antonio, Texas 78249

Re: Proposed employment termination

Dear Col. Putnam:

The Board of Trustees of the Harlandale Independent School District at its regular meeting on April 24, 1996, voted to propose your discharge from employment with the school district for good cause pursuant to Section 21.156 of the Texas Education Code.

The grounds for proposing your discharge from employment are the improper touching of several female cadets under your supervision throughout the school year and the improper and unauthorized strip search you ordered of female cadets under your supervision during a field trip on October 4, 1995 at Lackland Airforce Base.

If you desire to protest the Board's proposed action, you may do so pursuant to Section 21.159 and Subchapter F of Chapter 21 of the Texas Education Code.

Respectfully,

/s/ _____
David Sosa, President
Board of Trustees, Harlandale I.S.D.

xc: Mr. Richard A. Marquez, Supt.
Dr. Syl Perez, Principal
Personnel File

7472 Autumn Park
San Antonio, Texas 78429
June 7, 1996

Board of Trustees
Harlandale Independent School District
102 Genevieve
San Antonio, Texas 78214-2997

Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701

Dear Board of Trustees and Commissioner:

I am requesting a hearing before a Hearing Examiner concerning the Superintendent's recommendation to the Board of Trustees of the Harlandale Independent School District that my continuing contract with the District be terminated. I desire to protest the proposed termination action.

Very truly,

/s/ _____
Joe Putnam, LTC (Ret.)

January 8, 1998

President, HISD School Board
Harlandale Independent School District
114 Genevieve
San Antonio, Texas 79214

Re: Request for Hearing and Administrative Review

Dear Madam President:

During a recent phone conversation with a member of your board a suggestion was made to me that I write this letter and it is a communication which is, no doubt, long overdue. It has been nearly two years since I was falsely accused of misconduct by a former student of mine. It was a false accusation which started a cavalcade of events resulting in the worst imaginable nightmare and one of the most difficult battles of my life.

Due to the nature of the situation I faced at the time I retained an attorney who I depended upon to know the law well enough to be able to advise me and to know how to comply with its requirements. However, he did not handle his duties appropriately and I have, as a result, been denied a forum in which to present to you information that arose in connection with my own investigation. It took me several months and a considerable amount of money to amass what I feel to be incontrovertible proof that Jennifer Schomer and Brandy Trammell lied to school officials on February 12, 1996 when they accused me of impropriety. This evidence was presented to the District Attorney and a Bexar County Grand Jury which returned a "no bill" decision in my case. A "no bill" is very

rare and it means that Schomer's allegations had no basis in fact, that there was no reason to believe that I had engaged in the act of which I was accused and the jurors refused to indict me.

Attempting to clear my name and to reverse a dramatic miscarriage of justice, I have fought long and hard for an opportunity to present my case to the school board, as well, but I have been unable to find any means by which to do so - a situation singularly attributable to my former attorney's negligence. And, while I may have no legal or administrative right to a hearing, or to address the board, I hereby ask for the opportunity to do so and I appeal to your sense of morality, justice and fairness in this regard. Given the opportunity I can product the following:

a. A sworn statement written by Maxine Vargas, a student interviewed during the district's inquiry who at that time claimed to have witnessed the alleged misconduct. Maxine now recants the statement she gave to Delilah Rodriguez.

b. A tape recorded conversation during which Brandy Trammell admits that I never touched Jennifer Schomer.

c. Written and tape recorded statement from other eyewitnesses who testify that they were present at the two incidents during which Schomer accuses me of misconduct and further stating that no such misconduct ever occurred and/or that Schemer and Trammell lied.

d. Documentation showing that Jennifer Schemer and Brandy Trammell are being or have been investigated by the San Antonio Police Department for Filing a False Report with a Police Officer, a Class B misdemeanor in the State of Texas. The last word I received from the Office of the Chief of Police was that SAPD was seeking to file criminal charges against these girls.

In summary, all eyewitnesses to the alleged incidents have gone on record agreeing that I was not guilty of improper conduct. These witnesses include one interviewed by Delilah Rodriguez and some who were not interviewed by her. Additional information uncovered during our investigation revealed that, at the time she levied her false accusations, Schemer was using illegal drugs which may have influenced her judgment and that she has been under the care of a psychiatrist since middle school. Most of this evidence was available at the last meeting I attended with you, but procedure prevented the presentation of these facts.

Until now you have been unable to hear the whole truth of the events that resulted in my release from the district and, in the interest of justice, I ask that you grant me an opportunity to right the wrong that has been done. In a newspaper story printed last year, I learned that there are those within the board membership who have suffered similar experiences of being wrongfully accused of impropriety, and those who were must have some insight into the damage such things can do to one's life. I am only asking for the same opportunity they must have wanted after being similarly victimized. I ask for a forum on which to clear my name.

I served Harlandale community diligently and honorably for eight years, taught countless hundreds of its young people and made your JROTC program something of which you could be proud - a program which enjoyed the highest performance rating given by the Army. I now ask you to exercise the authority you have to grant me an evidentiary hearing at the earliest possible convenience during which I will be allowed sufficient time to present to you the side of the story which has been kept from you by circumstances beyond your control and mine.

Please feel free to contact me directly by phone at (210) 696-0687, or at the address listed below. I anxiously await your decision.

Respectively,

/s/ _____

LTC (Ret) Joe A. Putnam
7242 Autumn Park
San Antonio, Texas 78249

CF: Indiv. Members, HISD Board

Harlandale Independent School District
102 Genevieve
San Antonio, Texas 78214-2997
(210) 921-4340
FAX (210) 921-4334

January 28, 1998

Mr. Joe Putnam
7242 Autumn Park
San Antonio, TX 78249

Dear Mr. Putnam

Thank you for your January 8, 1998 correspondence to the Harlandale ISD Board of Trustees. The Board and I have considered your request for an evidentiary hearing so that you may answer the allegations made against you. You make such request understanding and admitting you have no legal or administrative right to a hearing or to address the Board in this matter.

The Harlandale ISD must decline to provide you the opportunity for an evidentiary hearing. As you are aware, the school district already afforded you the opportunity to a hearing so that you could defend your self against the allegations. You failed to timely request a hearing, and the independent hearing examiner and the Commissioner of Education have ruled that the district could lawfully terminate your employment. Furthermore, please understand that the hearing process and procedures, which are established in law and in school district policy, must be uniformly applied to all

employees regardless of individual situations. Although you encountered unfortunate circumstances in your case, such circumstances cannot serve as reason for the school district to deviate from its policy or the law in providing you with the requested hearing. It is even doubtful whether the school district has the authority to grant you the hearing.

Therefore, please understand our position in following policy and declining to grant your request. We wish you the best of luck in the future.

Sincerely,

/s/ _____
Jack C. Jordan

JCJ/gm